

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MANUEL URRIETA, an individual,,

Plaintiff,

v.

CITY OF FIRCREST, a municipal  
corporation; CHRIS ROBERTS, an  
individual,

Defendant.

CASE NO. 3:15-cv-05245RJB

ORDER ON DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT AND DISMISSAL OF  
CASE FOR FAILURE TO  
PROSECUTE

This matter comes before the court on Defendants' Motion for Summary Judgment. Dkt. 26. Plaintiff has not responded to the motion. The Court has considered the motion and the remainder of the file herein.

Defendants seek dismissal (1) as a matter of law, on the basis that Officer Chris Roberts is entitled to qualified immunity; (2) as a sanction for failure to attend a deposition, under Fed.R.Civ.P. 37(d); and (3) for failure to prosecute, under Fed.R.Civ.P. 41(b).

Plaintiff, a *pro se* litigant, apparently failed to update his mailing address and to attend his deposition. Dkt. 26. He was previously incarcerated at Washington Corrections Center until December 5, 2015, when he was released. Dkt. 25, at 6. Upon release, Plaintiff failed to update

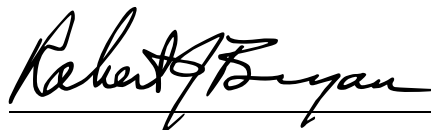
1 his mailing address. *Id.* at 6-7. On December 7, 2015, a copy of a subpoena was sent to Plaintiff  
2 at his Washington Corrections Center address, but was later returned as undeliverable. *Id.*  
3 Defendants also served a notice of deposition on Plaintiff at the same address, which was  
4 returned as undeliverable. *Id.* Plaintiff did not attend the deposition noted by Defendants for  
5 December 28, 2015. *Id.*

6 On the record presented, the Court cannot conclude that Plaintiff is aware of Defendants'  
7 Motion for Summary Judgment, because Plaintiff's lack of response and failure to attend the  
8 deposition can be traced to an incorrect mailing address. While Plaintiff has the duty to timely  
9 update his mailing address, his circumstances may make that difficult. The Court cannot in good  
10 conscience adjudicate the merits of the case, so the motion for summary judgment should be  
11 denied. The Court also lacks sufficient information to dismiss the case for Plaintiff's failure to  
12 appear for a deposition. However, given Plaintiff's general lack of responsiveness, dismissal for  
13 failure to prosecute is appropriate.

14 THEREFORE, Defendants' Motion for Summary Judgment (Dkt. 26) should be  
15 DENIED WITHOUT PREJUDICE. Defendants' request to dismiss under Fed.R.Civ.P. 37(d) is  
16 DENIED. Defendants' request to dismiss under Fed.R.Civ.P. 41(b) is GRANTED. This case is  
17 HEREBY DISMISSED.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
19 to any party appearing pro se at said party's last known address.

20 Dated this 22<sup>nd</sup> day of February, 2016.

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23 ROBERT J. BRYAN  
24 United States District Judge